IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
Kurtis T. Wilder, Presiding Judge

E.W. RAKESTRAW
Plaintiff-Appellee,

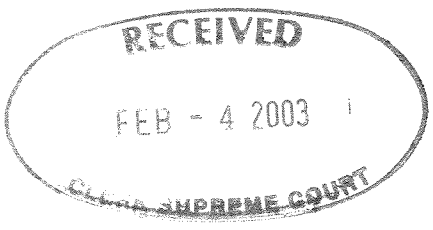
v

Docket No. 120996

GENERAL DYNAMICS LAND SYSTEMS
Defendant-Appellant.
_____/

BRIEF ON APPEAL - APPELLANT

ORAL ARGUMENT REQUESTED



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STATEMENT OF THE BASIS FOR THE JURISDICTION OF THE COURT

The Court has jurisdiction to review the order which was entered by the Workers' Compensation Appellate Commission in *Rakestraw v General Dynamics Land Systems*, 2001 Mich ACO - (Docket no. 01-0170, rel'd October 16, 2001) after the Court of Appeals denied leave to appeal, *Rakestraw v General Dynamics Land Systems*, unpublished order of the Court of Appeals, decided on January 30, 2002 (Docket no. 237610) by authority of the Workers' Disability Compensation Act of 1969, MCL 418.101; MSA 17.237(101), et seq. MCL 418.861a(14); MSA 17.237(861a)(14), second sentence. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 706, 732; 614 NW2d 607 (2002). *Holden v Ford Motor Co*, 439 Mich 257, 262-263; 484 NW2d 227 (1992).

The application for leave to appeal was filed with the Court within twenty-one days after the Court of Appeals entered the order which denied leave to appeal.

STATEMENT OF QUESTION PRESENTED

I

WHETHER SYMPTOMS OF AN EXISTING CONDITION THAT AN EMPLOYEE HAS ARE A *PERSONAL INJURY* WITHIN THE AMBIT OF THE WORKERS' DISABILITY COMPENSATION ACT OF 1969.

Plaintiff-appellee Rakestraw answers "Yes."

Defendant-appellant General Dynamics answers "No."

Court of Appeals answered "Yes."

Workers' Compensation Appellate Comm answered "Yes."

Board of Magistrates answered "Yes."

STATEMENT OF FACTS

Both the attending physician and a forensic specialist recognized that the work of plaintiff-appellee E.W. Rakestraw (Employee) for defendant-appellant General Dynamics Land Systems (Employer) had only provoked the symptoms of pain from arthritis and an earlier fusion of two vertebrae in the neck. (1a-2a, 3a-4a, 5a, 6a, 7a, 8a-9a)

The Employee filed an application for mediation or hearing with the Bureau of Workers' & Unemployment Compensation (Bureau) on April 18, 2000, claiming workers' disability compensation from the Employer because of a personal injury at work on September 29, 1999, which was described as *vigorous physical activity and stress which significantly caused, contributed to and aggravated a neck condition.* (10a) The Employer appeared and contested this claim with a carrier's response that was filed with the Bureau on June 14, 2000, denying a personal injury occurred. (10a) The Bureau remitted the case to the Board of Magistrates (Board) for a hearing and the disposition of the dispute.

The Board conducted a hearing and ordered the Employer to pay continuing weekly workers' disability compensation and medical, *Rakestraw v General Dynamics Land Systems, Inc,* unpublished order of the Board of Magistrates, decided on April 10, 2001 (Docket no. 041001003) (13a), with the decision that the Employee was disabled after September 29, 1999, by the symptoms of pain which had been provoked by work even though the existing condition in the neck itself was not changed at all. *Rakestraw v General Dynamics Land Systems, Inc,* unpublished opinion of the Board of Magistrates, decided on April 10, 2001 (Docket no. 041001003), slip op., 8. (21a)

The Workers' Compensation Appellate Commission (Commission) affirmed, *Rakestraw v General Dynamics Land Systems*, 2001 Mich ACO - (Docket no. 01-0170, rel'd October 16, 2001) (24a), only because the rule of stare decisis required applying case law from the Court of Appeals that was criticized. *Rakestraw v General Dynamics*

Land Systems, 2001 Mich ACO - (Docket no. 01-0170, rel'd October 16, 2001), slip op., 5-6. (29a-30a)

The Court of Appeals denied leave to appeal. *Rakestraw v General Dynamics Land Systems*, unpublished order of the Court of Appeals, decided on January 30, 2002 (Docket no. 237610). (31a)

The Court granted leave to appeal and allowed for filing a brief amicus curiae by people or groups who were interested in the determination of the question. *Rakestraw v General Dynamics Land Systems*, 468 Mich - ; - NW2d - (2002). (32a)

SUMMARY OF ARGUMENT

The text and context of a statute in the Workers' Disability Compensation Act of 1969 (WDCA), MCL 418.101; MSA 17.237(101), et seq., requires that an employee present a specific circumstance to establish the eligibility for compensation. The circumstance is actual damage to the body which is distinct from any existing condition. Symptoms of an existing condition alone are not enough.

This was recognized and reiterated by the Court but disregarded by the Court of Appeals which has extrapolated a rule from statements that were made by the Court in an isolated case which has been since repudiated.

ARGUMENT

I

SYMPTOMS OF AN EXISTING CONDITION THAT AN EMPLOYEE HAS ARE NO *PERSONAL INJURY* WITHIN THE AMBIT OF THE WORKERS' DISABILITY COMPENSATION ACT OF 1969.

A statute in the WDCA describes what a person must demonstrate to establish eligibility for workers' disability compensation by stating that *an employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury shall be paid compensation as provided in this act.* MCL 418.301(1); MSA 17.237(301)(1), first sentence.

This statute is a complex sentence by having a main clause that is composed of the subject, verb, and direct object of the sentence which is *an employee shall be paid compensation as provided in this act* and a subordinate clause that is composed of a predicate, verb, and direct object which is *who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury.*[1] This can be understood from the use of the punctuation marks of two commas which offset the subordinate clause from the main clause. *Kales v City of Oak Park*, 315 Mich 266, 271; 23 NW2d 658 (1946). *Winokur v Michigan State Bd of Dentistry*, 366 Mich 261, 266; 114 NW2d 233 (1962). *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999). In the case of *Sun Valley Foods Co, supra*, 237, the Court observed that, "it is a general rule of grammar and of statutory construction that a modifying word or clause is confined solely to the last antecedent . . . (citations omitted)."

The main clause *an employee shall be paid compensation as provided in this act* is plain because it is grammatical by having the subject, verb, and object of the sentence. The subject is the noun phrase *an employee* composed of the indefinite article *an* and the concrete noun *employee*. Not surprisingly, the subject *an employee* is placed at the beginning of the sentence. The verb is the verb phrase *shall be paid* which is composed of the past tense form of the action verb *pay* and the imperative phrase *shall be*. See *Transamerica Freight Lines, Inc v Quimby*, 381 Mich 149, 158-159; 160 NW2d 865 (1968). *Hadley v Ramah*, 134 Mich App 380, 387; 351 NW2d 305 (1984). The object is the concrete noun *compensation*.

The meaning of each of the words in the main clause is plain by having a definition in the WDCA. *Employee* is described by MCL 418.161(1)(a) - (n); MSA 17.237(161)(1)(a) - (n). *Paid* is defined by MCL 418.801(1); MSA 17.237(801)(1) and

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[1] Abbreviated to *arising out of and in the course of employment* for economy of briefing. The phrase *by an employer who is subject to this act at the time of the injury* is not important to understanding the question here.

by MCL 418.801(2), (3); MSA 17.237(801)(2), (3) which allows for penalties when compensation is *not paid. Compensation* is that which is *provided in this act* or the medical care that is described by MCL 418.315(1); MSA 17.237(315)(1); the vocational rehabilitation service described by MCL 418.319(1); MSA 17.237(319)(1); and the wage loss replacements described by MCL 418.351(1); MSA 17.237(351)(1) and MCL 418.361(1); MSA 17.237(361)(1) with the supplements that are allowed for catastrophic injury. MCL 418.521(1), (2); MSA 17.237(521)(1), (2).

The subordinate clause *who receives a personal injury arising out of and in the course of employment* is plain as it is a relative clause.

A relative clause is one kind of a subordinate clause which is commonly known as an adjectival clause by performing the same function in a sentence as an adjective to modify or explain a noun or a pronoun. A relative clause may be restrictive or non-restrictive.

A restrictive relative clause limits the meaning of the noun or pronoun which is the subject of the main clause. Although subordinate, a restrictive relative clause is essential to making the sentence clear. When a restrictive relative clause is omitted, the sentence either has no meaning or the meaning is absurd. The subordinate clause *who receives a personal injury arising out of and in the course of employment* is not a restrictive relative clause because the main clause *an employee shall be paid compensation as provided in this act* remains an entirely intelligible sentence when omitted.

A non-restrictive relative clause adds another idea to the sentence. The thought expressed by a non-restrictive relative clause could be expressed with another, subsequent sentence. A non-restrictive relative clause must be offset from the main clause by using the punctuation mark of a comma at the start and the punctuation mark of a comma or period at the end. The Court has recognized this in the case of *Kales, supra,* and *Winokur, supra.* The subordinate clause *who receives a personal injury arising out of and in the*

course of employment is a non-restrictive relative clause by adding another thought to the sentence and is offset by commas which signal the start and end.

The subordinate clause is a grammatical non-restrictive relative clause by having a predicate, verb, and direct object. The predicate is the relative pronoun *who* which is proper as the singular form of the last antecedent which is the subject of the main clause *employee*.

The verb is the present tense action verb *receives* which is grammatical because the present tense verb is always used in a non-restrictive relative clause to express a truth or requirement. Something which is always true or required must be expressed with a present tense verb. The present tense form of the action verb *receives* in the subordinate clause is why the sentence is a law by expressing the statement as a truth or as a requirement of the sentence. Grammatical errors are often made when a general truth expressed in a subordinate clause follows the past tense verb in the main clause of a sentence. For example, the sentence *He replied that Los Angeles is the largest city on the West Coast* is grammatical while *He replied that Los Angeles was the largest city on the West Coast* is not because of the use of the past tense verb form *was* in the subordinate clause. This common grammatical error is not present in the sentence. The present tense form of the action verb in the subordinate clause *receives* does not follow the past tense form of the action verb in the main clause which is *paid*. This is why the sentence is a law. It expresses the truth or requirement about the kind of *an employee who shall be paid compensation as provided in this act*.

The object of the non-restrictive relative clause is the noun *injury*. Here, *injury* is an abstract noun by referring to a quality or condition as other abstract nouns such as *difficulty* or *love*. *Injury* is not a concrete noun which refers to a physical object such as *employee* in the main clause.

Injury is modified in two ways. One way that *injury* is modified is by the pre-modifier *personal*. The other way is by the post-modifier *arising out of and in the course of employment*. While the combination of a pre-modifier and post-modifier is not common in colloquial English, it is frequent in formal speech and writing such as statutes.

Unlike the subject, verb, and object of the main clause, the predicate, verb, and object of the subordinate clause are not described by the WDCA. For example, the verb *receives* is not defined by the WDCA. The object of the subordinate clause *injury* is not actually defined by another statute in the WDCA. There is no statute in the WDCA which declares that *injury* "means" one thing or another the way that the WDCA does actually declare that *employee* "means" *a person in the service of the state, a county, city, township, village, or school district, under any appointment, or contract of hire, express or implied, oral or written* and *every person in the service of another, under any contract of hire, express or implied, including aliens*. Section 161(1)(a), first sentence. Section 161(1)(l), first sentence, first clause. See also, MCL 418.301(4); MSA 17.237(301)(4), first sentence, which describes *disability* with the word *means*.

This absence of an actual description of *injury*, the pre-modifier *personal*, and the post-modifier *arising out of and in the course of employment* requires the Court to provide an exposition. MCL 8.3a; MSA 2.212(1). This statute states that,

> "[a]ll words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning."

Section 8.3a means that the Court must apply the definition of words which a statute provides such as *employee* but must construe words which a statute does not define and directs how the interpretation should proceed. The Court has appreciated this. *People v Smith*, 246 Mich 393; 224 NW 402 (1929). *W S Butterfield Theatres, Inc v Dept of Revenue*, 353 Mich 345; 91 NW2d 269 (1958). *Robertson v DaimlerChrysler Corp*, 465

Mich 732; 641 NW2d 567 (2002). *Stanton v City of Battle Creek*, 466 Mich 611; 647 NW2d 508 (2002). In the case of *Smith, supra*, 396, the Court aptly observed that,

> "[w]e do not intend to split hairs over the meaning of the term, and would feel bound to accept a legislative definition, if indulged, even though at variance with common understanding and all lexicographers, but when the legislature employs a common term as indicative of the purpose of an enactment, without further definition or designation, we must let the term speak its ordinary sense."

In the case of *Robertson, supra*, 748, the Court expressly observed that, "[u]nless defined in the statute, every word or phrase of a statute will be ascribed its plain and ordinary meaning. See MCL 8.3a. See also, *Western Mich Univ Bd of Control v Michigan*, 455 Mich 531, 539; 565 NW2d 828 (1997)."

Most recently, the Court again said in the case of *Stanton, supra*, 617, "because the motor vehicle exception does not provide a definition of 'motor vehicle,' we are required to give the term its plain and ordinary meaning. MCL 8.3a; *People v McIntyre*, 461 Mich 147, 153; 599 NW2d 102 (1999)."

This process is conducted by the Court de novo. *Lincoln v General Motors Corp*, 461 Mich 483; 607 NW2d 73 (2000), reh den 461 Mich 1290 (2000). *Stozicki v Allied Paper Co*, 464 Mich 257; 627 NW2d 293 (2001). *Robertson, supra*, 739.

A. THE COMMON AND APPROVED USE OF *PERSONAL INJURY* BY THE STATUTES IN THE WDCA THAT APPLY MEANS *MEDICALLY IDENTIFIABLE DAMAGE TO THE BODY OF THE EMPLOYEE WHICH IS DISTINCT FROM ANY EXISTING CONDITION.*

That *injury* is an abstract noun does not mean that the meaning is abstract or imprecise. Indeed, *injury* is a measurable abstract noun. *Injury* is an abstract noun which can be measured by count just as the abstract noun *meeting*,

The committee has had *two meetings*.

and by mass such as the abstract noun *yard work*,

I have *much yard work* to finish.

The common and approved use of *injury* can be found from dictionaries. *Stanton, supra*, 617, "[w]hen determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate. *Horace v City of Pontiac*, 456 Mich 744, 756; 575 NW2d 762 (1998)."

The common and approved use of *injury* is *damage*. *Webster's Dictionary of the English Language, Unabridged (Encyclopedic Ed)* (J. G. Ferguson Pub Co, 1977). *The American College Dictionary* (Random House, 2001). *A Dictionary of Modern Legal Usage (2nd Ed)* (Oxford University Press, 1995). The first and preferred definition of *injury* by *Webster's*, 944, is "physical harm or damage to a person, property, etc." Similarly, *The American College Dictionary*, 626, describes *injury* as "harm of any kind done or sustained."

Injury as *damage* can be appreciated from the definition of *damage*. *Webster's defines damage* as "any hurt, injury, or harm to one's person or estate causing any loss of property, etc." and "the loss so caused." *Webster's*, 459. Likewise, *The American College Dictionary*, 305, defines *damage* in just the same way by stating that "injury or harm that impairs value or usefulness."

The *Dictionary of Modern Legal Usage* does not include a separate entry for *injury* but defines *damage* and *injury* together in a single entry by stating that,

> "**damage,** n.; **injury**. There is a modern tendency to refer to *damage to property*, but *injury to the person*. It is not an established distinction. Blackstone did not observe it, having titled one section of his great treatise *Injury to Property*, and neither the English nor the American courts have consistently observed it. One could not be faulted for restricting one's usage in this way, but neither could one be faulted for writing *damage to persons* or *injury to property*." *A Dictionary of Modern Legal Usage (2d Ed)*, 243. (original emphasis)

That *injury* and *damage* are synonyms should not be confused by the special meaning of the plural form of *damage* which is *damages*. *American Stevedores, Inc v Porello*, 330 US 446; S Ct ; LE2d (1947). The Supreme Court of the United States held in

American Stevedores, Inc, supra, 450 n 6, that, "[t]he word *damage*, meaning 'Loss, injury, or deterioration,' is to be distinguished from its plural, - *damages* - which means a compensation in money for a loss or *damage*." The Court has recognized the very real difference between *damage* and *damages* as well. *Strong v Neidermeir*, 230 Mich 117, 122; 202 NW2d 938 (1925), "Damages means compensation which the law authorizes for an injury inflicted." (emphasis supplied)

Plainly, *injury* and *damage* are synonyms. *Injuries* and *damages* are not.

The description of *injury* and the description of *damage* that refer to each other do not include *symptom*. *Webster's* and *The American College Dictionary* and, indeed, no dictionary includes *symptom* as a definition of *injury* or *damage*.

As indicated, *injury* as the noun which is the object of the subordinate clause is modified with a pre-modifier *personal*.

A modifier which is placed before a noun is commonly known as a pre-modifier for that location. There are three types of pre-modifiers such as an adjective,

We had a *pleasant* vacation.

a gerund form participle,

This is an *accelerating* policy of the state.

and a noun,

The *passenger* liner docked at the pier.

Personal is certainly a noun form pre-modifier having the composition from the concrete noun *person* with the suffix *-al* which allows functioning as a pre-modifier of *injury*.

The phrase *personal injury* is not an adjectival phrase such as *personal injury lawyer* because there is no later noun and because of the absence of the punctuation by a hyphen. See *A Dictionary of Modern Legal Usage*, 654-655.

Personal modifies the noun *injury* by referring to the body of the *employee*. Both *Webster's* and *The American College Dictionary* establish that *personal* means the *body of an individual human being*, "of or pertaining to a particular person," *American College Dictionary*, 904.

The term *personal injury* in the statute plainly means *damage to the body of the employee* by recognizing the common and approved meaning of the two words.

There must be medical identification because a *personal injury* is *damage to the body of the employee*. Sometimes, this is an observable condition such as a laceration or a broken leg which are examples of damage to the body which an employee could see and report. However, most damage is not so readily apparent and is beyond the ken of anyone other than an expert. *Leavesley v City of Detroit*, 96 Mich App 92; 292 NW2d 491 (1980). In the case of *Leavesley, supra*, 94, 95, the Court of Appeals said that,

> "[i]n *Gibson, supra*, 702, with regard to a plaintiff's uncorroborated testimony that he had broken his collarbone, our Supreme Court stated that, 'Plaintiff had a right to testify to something he knew, and that did not require expert testimony to establish'. That same ruling was pronounced 75 years earlier in a more elaborate fashion as follows:
>
> 'We think there is no rule which can prevent ordinary witnesses from describing what they see, or from testifying concerning the kind of injury or sickness of others whom they have had occasion to consort with, unless it is something out of the common course of general information and experience, or unless the question presented involves medical knowledge beyond that o ordinary professional personas.' *Elliott v Van Buren*, 33 Mich 49, 54-55; 20 Am Rep 668 (1875).
>
> * * *
>
> To the extent that *Gibson, supra*, provides authority for a lay witness to testify concerning his broken bones, and we ask the Supreme Court to reconsider its validity, we distinguish it from the present case because we find that a broken collarbone may

> well be subject to a layman's observation whereas a fractured vertebra in all likelihood would not. See *Evans v The People*, 12 Mich 27, 33-36 (1863). Furthermore, the circumstances surrounding the alleged fracture in *Gibson, supra*, were not disclosed, and for all we know, if proof of that fracture did not require expert testimony, it may have been because it was a compound fracture that was readily obvious to the untrained eye."

A *symptom* is no *personal injury*. *Webster's* defines *symptom* as "a sign or token; that which indicates the existence or occurrence of something else." *The American College Dictionary* likewise describes a *symptoms* as "any phenomenon or circumstance accompanying something and serving as evidence of it." In medicine, a *symptom* is the phenomena arising from an injury or illness. Essentially, *symptom* is *epiphany* of an existing condition which may or may not be an injury or a disease. Certainly, pain may manifest a *personal injury* such as a broken leg and nausea may manifest a *disease* such as e. coli bacteria in extreme amplification. Vertigo, dyspnea, headache and simple fatigue may manifest a condition such as low blood sugar from lack of food or lack of sleep which no one would consider an existing *injury* or *disease*.

The Court has uniformly recognized just this difference between *personal injury* as *a medically identifiable damage to the body of the employee* and *symptoms* as the epiphany of an existing injury but not an injury per se. *Marman v Detroit Edison Co*, 268 Mich 166; 255 NW 750 (1934). *Kostamo v Marquette Iron Mining Co*, 405 Mich 105; 274 NW2d 411 (1979). *Miklik v Michigan Special Machine Co*, 415 Mich 364; 329 NW2d 713 (1982). *Farrington v Total Petroleum, Inc*, 442 Mich 201; 501 NW2d 76 (1993). *McKissack v Comprehensive Health Services of Detroit*, 447 Mich 57; 523 NW2d 444 (1994), reh den 447 Mich 1202; 525 NW2d 453 (1994). In the case of *Marman, supra*, 167, the Court held that,

> "[p]ersonal injury implies something more than changes in the human system incident to the general process of nature or existing disease or weakened physical condition. The term, as employed in the compensation act, contemplates some intervention which either procedures a direct injury or so

> operates upon an existing physical condition as to cause an injurious result, reasonably traceable thereto."
>
> This was reiterated by the Court in *Miklik, supra*, 367, 369,
>
> "[i]n all successful worker's compensation cases, the claimant must establish by a preponderance of the evidence both a personal injury and a relationship between the injury and the workplace. In heart cases, the first question is whether there is heart damage. The second is whether the heart damage can be linked by sufficient proof to the employment. Only if the first question is answered affirmatively need the second be asked.
>
> The existence of heart damage is, of course, a matter of medical proof.
>
> * * *
>
> It is impossible to turn arteriosclerosis into compensable heart damage merely by labeling it so. The board's opinion, worded in conclusory terms, ignored this premise of *Kostamo*. Testimony, at most, showed the progressive effects of arteriosclerosis, not *separate* heart damage." (emphasis by the Court)

In the most recent exposition in the case of *McKissack, supra*, 67, the Court again recognized that,

> "[t]here is a difference between pain resulting from 'illness or disease *not caused or aggravated*' by the work or working conditions, and pain *resulting* from a work-related injury. As indicated in *Kostamo*, workers' compensation benefits may not be awarded simply because a worker is unable by reason of pain to continue with the work if the cause of the pain is illness or disease not caused or aggravated by the work or working conditions. But contrariwise, if the WCAB finds that pain is caused or aggravated by a work-related injury, and the worker cannot by reason of pain resulting from the injury continue to work, the WCAB can find that the worker is disabled and award benefits." (emphasis by the Court)

The Court of Appeals has usually recognized and applied this principle that *personal injury* is not a symptom of an existing injury or illness. *Castillo v General Motors Corp*, 105 Mich App 776; 307 NW2d 417 (1981), lv den 412 Mich 895 (1982). *Weinmann v General Motors Corp*, 152 Mich App 690; 394 NW2d 73 (1986), lv den 426 Mich 860 (1986). See also, *Buysee v Kentucky Fried Chicken*, unpublished opinion of the Court of

Appeals, decided on July 30,1990 (Docket no. 119089), lv den 437 Mich 1004 (1991). *Steck v Eckrich & Sons, Inc*, unpublished opinion of the Court of Appeals, decided on April 21, 1991 (Docket no. 119382). *Brewer v General Motors Corp*, unpublished opinion of the Court of Appeals, decided on August 25, 2000 (Docket no. 216990), lv den 463 Mich 998; 625 NW2d 784 (2001). In the case of *Castillo, supra*, the employee experienced the symptom of pain while working with an existing condition of thoracic outlet syndrome which itself was not initiated or altered by work. Compensation was denied because there was no *personal injury* within the rubric of the subordinate clause because there was no medically identifiable damage distinct from the existing condition of thoracic outlet syndrome. Relying upon *Kostamo, supra*, the Court of Appeals said in *Castillo, supra*, 782, 783, that,

> "[t]he present case is similar to the claims involving *Fiszer* and *Hannula* reported with *Kostamo*. It was undisputed that both Fiszer and Hannula were told by their physicians to discontinue working due to arteriosclerosis. Although both claimants argued that they had suffered heart injuries during their employment, the WCAB was presented with conflicting medical testimony as to whether they had suffered heart damage. The WCAB weighed the conflicting medical testimony and found that although there was a casual relationship between the underlying disability, arteriosclerosis, and the claimant's inability to continue working, that disability was not caused and could not have been aggravated by their employment. *Kostamo, supra*, 118. Likewise, in the present case, plaintiff argued that she had suffered injury during her employment. Similarly, the WCAB was presented with conflicting medical testimony as to whether plaintiff had suffered an employment-related injury or whether plaintiff suffered from thoracic outlet syndrome which, like arteriosclerosis, was not caused and could not have been aggravated by here employment. The WCAB weighed the conflicting medical testimony and denied benefits. As did the Supreme Court in *Kostamo* with regard to Fiszer and Hannula, we affirm the WCAB's decision."

In *Weinmann, supra*, the Court of Appeals recognized and applied the principle that those symptoms of an existing injury or illness provoked by activity at work are not a *personal injury*. There, the employee experienced pain from intermittent

claudication which was an effect of an existing arteriosclerosis. When walking or using muscles, pain occurred, while with rest, that pain abated. Compensation was denied because those symptoms were no *personal injury*,

> "[a]ccording to *Miklik, supra*, it is the heart damage that results from a heart attack that is compensable. Thus plaintiff must prove that he suffered damage due to his claudication or attacks. No such proof was offered. According to the depositions of the medical experts, plaintiff's left femoral artery was eighty percent to ninety percent blocked both before and after the pain he suffered. Injury implies something more than the changes incident to an existing diseases. *Marman v Detroit Edison Co*, 268 Mich 166, 167, 255 NW 750 (1934)." *Weinmann, supra*, 699.

In *Steck, supra*, the Court of Appeals denied compensation when an employee with an existing debility in a knee, which was diagnosed by an orthopedic specialist as chondromalacia, experienced pain because of climbing stairs at work and striking that knee on a table because there was not other condition or damage,

> "[w]hile the WCAB relied on plaintiff's testimony that both the stair-climbing and the hitting of her knee caused her pain, where a worker *brings a preexisting condition to the workplace, compensation is not merited just because the workers cannot work without pain.* Rather the workers must show that the disease or condition itself, not just the symptoms, was accelerated, aggravated or contributed to by working conditions." [citation by the Court of Appeals to *Kostamo, supra*, and *Weinmann, supra*, omitted] *Steck, supra*, slip op., 4.

Death is no *personal injury*. While death may be considered as the most serious injury or damage to the body of a person, the WDCA does not consider death as a species or degree of injury. Instead, the WDCA treats death as an entirely separate subject by stating that *in the case of death resulting from the personal injury to the employee, compensation shall be paid to the employee's dependents as provided in this act.* Section 301(1), second sentence.

B. OTHER STATUTES IN THE WDCA *DESCRIBE PERSONAL INJURY* AS *MEDICALLY IDENTIFIABLE DAMAGE TO THE BODY OF THE EMPLOYEE WHICH IS DISTINCT FROM ANY EXISTING CONDITION.*

Although the WDCA does not define *personal injury*, the WDCA *does* describe conditions which are included by the term. MCL 418.401(2)(b); MSA 17.237(401)(2)(b). MCL 418.405(1); MSA 17.237(405)(1). Section 401(2)(b), first sentence, states that *personal injury shall include a disease or disability which is due to causes and conditions which are characteristic of and peculiar to the business of the employer and which arises out of and in the course of employment.*

Section 401(2)(b), first sentence, has been recognized by the Court as including all of those individual diseases which had been inventoried before the WDCA was amended by 1943 PA 245. *Gacioch v Stroh Brewery, Co*, 426 Mich 612, 624-625; 396 NW2d 1 (1986) (BRICKLEY, J. dissenting). In *Gacioch, supra*, 624-625, Justice Brickley quite accurately recapitulated the meaning of section 401(2)(b), first sentence, from a simple historical analysis when stating that,

> "[t]he statute makes it clear that 'personal injury shall include . . . [an occupational] disease'. Thus occupational diseases are only one form of personal injury which, to be compensable, must be 'due causes and conditions which are characteristic of and peculiar to the business of the employer . . . '
>
> When the occupational disease concept was introduced into the scheme of workers' compensation in 1937, only an 'accidental or fortuitous event' qualified for compensation under what the statue then describes as 'personal accident' or accidental injury' under the predecessor of §301. See, e.g., *Hagopian v Highland Park*, 313 Mich 608, 619, 22 NW2d 116 (1946).
>
> We have frequently held that under the compensation act, prior to the adoption of the occupational disease amendment . . . one . . . cannot recover unless there is an accident or a fortuitous event causing the disability. It was for this reason there was a special provision made in regard to hernia in the occupational disease amendment to the act.
>
> In 1943, the statute was again amended to delete the limitation of only enumerated occupational diseases. 1943 PA 245. At the same time, 'personal injury' was substituted for 'personal accident' under the predecessor to §301. Even with the addition of 'personal injury' as the catchall coverage of the act, this Court continued to limit the §301 predecessor coverage.

> The *Hagopian* Court, in a four-to-three opinion, held that 'accident was changed to 'injury' only to accommodate the occupational disease provision, not to broaden the coverage of the main injury provision of the act.
>
> There was nothing whatsoever in the title to the act to indicate that the aggravation of a pre-existing sickness or disease without any accidental or fortuitous event was covered. [*Hagopian, supra*, p 620.]
>
> Two years later, in interpreting the occupational disease provision, this Court said in a unanimous opinion, 'we think it was the intention of the legislature to allow compensation for disability resulting from a disease contracted in the course of the employment and brought about by the nature of such employment and the conditions under which it was carried on.' *Mills v Detroit Tuberculosis Sanitarium*, 323 Mich 200, 212; 35 NW2d 239 (1948).
>
> This history shows that the term '*personal injury*' was originally intended to cover the traditional accident or occurrence that is work-connected."

Section 401(2)(b), last sentence, allows another particular condition as a *personal injury* by stating that *a hernia to be compensable must be clearly recent in origin and result from a strain arising out of and in the course of employment and be promptly reported to the employer.*

Section 405(1) defines another particular condition as a *personal injury* by stating that,

> "[i]n the case of a member of a full paid fire department of an airport run by a county road commission in counties of 1,000,000 population or more or by a state university or college or of a full paid fire or police department of a city, township, or incorporated village employed and compensated upon a full-time basis, a county sheriff and the deputies of the county sheriff, members of the state police, conservation officers, and motor carrier inspectors of the Michigan public service commission, *'personal injury' shall be construed to include respiratory and heart diseases or illnesses* resulting therefrom which develop or manifest themselves during a period while the member of the department is in the active service of the department and result from the performance of duties for the department." (emphasis supplied)

Another statute necessarily implies that some particular diseases are a *personal injury* by limiting the responsibility of an employer for workers' disability compensation. MCL 418.531(1); MSA 17.237(531)(1). Section 531(1) states that,

> "[i]n each case in which a carrier including a self-insurer has paid, or causes to be paid, compensation for disability or death from silicosis or other dust disease, or for disability or death arising out of and in the course of employment in the logging industry, to the employee, the carrier including a self-insurer shall be reimbursed from the silicosis, dust disease, and logging industry compensation fund for all sums paid in excess of $12,500.00 for personal injury dates before July 1, 1985, and for all compensation paid in excess of $25,000.00 or 104 weeks of weekly compensation, whichever is greater, for personal injury dates after June 30, 1985, excluding payments made pursuant to sections 315, 319, 345, and 801(2), (5), and (6) which have been paid by the carrier including a self-insurer as a portion of its liability."

The Court has established that phthisis and pneumoconiosis are particular diseases that are within the terms of section 531(1). *Felcoskie v Lakey Foundry Corp*, 382 Mich 438; 170 NW2d 129 (1969). See also, *Alston v Chrysler Corp*, 464 Mich 864; 630 NW2d 619 (2001).

The noteworthy feature of these statutes which are in pari materia by enumerating concrete examples of *personal injury* is that all are *damage to the body of an employee* which can be established by physicians. It is beyond cavil that the enumerated diseases which are now subsumed by section 401(2)(b), first sentence, as *a disease or disability which is due to causes and conditions which are characteristic of and peculiar to the business of the employer*; the *hernia* named by section 401(2)(b), last sentence; the *respiratory and heart diseases* identified by section 405(1); and the *silicosis* of section 531(1) are all *damage to the body* that can be measured and diagnosed by a medical expert. None are symptoms.

The Court may consider the concrete examples provided by statutes to establish the meaning of a general term. *Roberts v City of Detroit*, 102 Mich 64; 60 NW 450

(1894). *Poletown Neighborhood Council v City of Detroit*, 410 Mich 616; 304 NW2d 455 (1981).

Another statute in the WDCA requires medically identifiable damage to the body to qualify a person for a benefit. MCL 418.901(a); MSA 17.237(901)(a). Section 901(a) describes a person as *vocationally disabled* by stating that *'vocationally disabled means a person who has a medically certifiable impairment of the back or heart, or who is subject to epilepsy, or who has diabetes, and whose impairment is a substantial obstacle to employment, considering such factors as the person's age, education, training, experience, and employment rejection.*

While not in pari materia because a particular kind of *disability* is defined instead of *personal injury*, section 901(a) is tie-barred to section 301(1), first sentence, in another way. Section 901(a) defines the condition which a person must demonstrate to establish eligibility for a benefit allowed by the WDCA just as section 301(1), first sentence, defines the condition which a person must demonstrate to establish eligibility for benefits that are allowed by the WDCA. Section 901(a) requires that a person must demonstrate a *vocational disability* to qualify for the certificate which facilitates employment by limiting the responsibility of a prospective employer for workers' disability compensation, MCL 418.921; MSA 17.237(921), second sentence, which is a very real help to an unemployed person. Similarly, section 301(1), first sentence, requires that a person demonstrate a *personal injury* to qualify for other benefits allowed by the WDCA such as medical care, vocational rehabilitation, and weekly workers' disability compensation. Section 315(1). Section 319(1). Section 351(1). Section 361(1). It is beyond cavil that the purpose of defining *vocationally disabled* and the purpose of defining *personal injury* is the same of qualifying a person for one or another benefit.

As the purpose is the same, it should not be too surprising that the same condition is the same as *medically identifiable damage to the body of the person.*

C. THE RULE OF *ANY AGGRAVATION, CONTRIBUTION, OR ACCELERATION* AND *CONTRIBUTED TO OR AGGRAVATED OR ACCELERATED BY THE EMPLOYMENT IN A SIGNIFICANT MANNER* DO NOT APPLY TO DESCRIBE *PERSONAL INJURY.*

The post-modifier of *injury* is *arising out of and in the course of employment* which is composed of two prepositional phrases *arising out of* and *in the course of* that describe how and when a *personal injury* must occur. *Rayner v Sligh Furniture Co*, 180 Mich 168; 146 NW 665 (1914). *Hills v Blair*, 182 Mich 20; 148 NW 243 (1914). *Simkins v General Motors Corp (After Remand)*, 453 Mich 703; 556 NW2d 839 (1996). In the case of *Simkins, supra*, 712-713, n 14, the Court said of the post-modifier,

> "[u]nder the old rule in Michigan, there were two separate tests to determine whether an injury (1) arose out of and (2) in the course of the injured employee's employment: 'out of' related to the cause or source of the accident, whereas 'in the course of' related to time, place, and circumstances. See *Appelford v Kimmel*, 297 Mich 8, 12; 296 NW 861 (1941). However in *Whetro*, n 10 *supra* at 242, a plurality of this Court concluded that Michigan 'no longer requires the establishment of a proximately causal connection between the employment and the injury . . . . ' This Court has more recently stated that this analysis from *Whetro* was not precedential. See *Dean v Chrysler Corp*, 434 Mich 655, 660-661; 455 NW2d 699 (1990). Regardless, Michigan cases have not employed this distinction and have generally used the entire phrase to refer to the connection between the injury and employment. Welch, Workers' Compensation in Michigan: Law & Practice (3d ed), §4.1, pp 4-1 to 4-2. We do not address this question regarding whether the two phrases require a separate test."

This observation was entirely correct. In *Hills, supra*, 25, the Court recognized the importance of the two prepositional phrases in the subordinate clause by stating that,

> "[u]nder the provisions of this act, only that employee is entitled to compensation who 'receives personal injuries arising out of and in the course of his employment.' It is to be borne in mind that the act does not provide insurance for the employed workman to compensate any other kind of accident or injury which may befall him. * * * 'Out of' refer to the origin, or cause of the accident, and he words 'in the course of' to the time, place, and circumstances under which it occurred."

The importance here is that the pre-modifier *personal* and the post-modifier *arising out of and in the course of employment* modify the subject noun *injury* by describing the character of the subject while the post-modifier modifies the occasion by describing how and when.

This profound difference has eluded the Court, particularly in claims for workers' disability compensation that were based on a mental illness. *Klein v Len H Darling Co*, 217 Mich 485; 187 NW 400 (1922). *Carter v General Motors Corp*, 361 Mich 577; 106 NW2d 105 (1960). *Deziel v Difco Laboratories, Inc (After Remand)*, 403 Mich 1; 268 NW2d 1 (1978). In the case of *Deziel, supra*, 37, the Court conflated the different ideas which are conveyed by the text *injury* and *arising out of and in the course of employment by an employer who is subject to this act at the time of the injury* by equating *injury* and an *event* when stating that an employee must demonstrate "(1) whether the [employee] is disabled and (2) whether a personal injury (a precipitating work-related event) occurred."

This and the similar declarations in the case of *Klein, supra*, 494, and *Carter, supra*, 585, are entirely wrong by conflating or just ignoring the pre-modifier *personal injury* which concerns the character of the *injury* with the post-modifier *arising out of and in the course of employment* which concerns the *occasion* of the injury, not the injury as an injury. A *personal injury* is NOT an event. A *personal injury* is only a RESULT OF an event. *Klein, supra, Carter, supra,* and *Deziel, supra,* may be reversed.

The Court has announced a rule of *any aggravation, contribution, or acceleration* from the statute. *Dressler v Grand Rapids Die Casting Corp*, 402 Mich 243; 262 NW2d 629 (1978). *Kostamo, supra. Miklik, supra.* In the case of *Dressler, supra*, 253-254, the Court held that,

> "[w]hen aggravation of an injury involves successive employers as in the instant case, the rule is clear:
>
> ' 'The Massachusetts-Michigan rule in successive-injury cases is to place full liability upon the carrier covering the risk at the

time of the most recent injury that bears a causal relation to the disability.

' 'If the second injury takes the form merely of a recurrence of the first, and if the second incident *does not contribute even slightly* to the causation of the disabling condition, the insurer on the risk at the time of the original injury remains liable for the second. In this class would fall most of the cases discussed in the section on range of consequences in which a second injury occurred as the direct result of the first, as when claimant falls because of his crutches which his first injury requires him to use. This group also includes the kind of case in which a man has suffered a back strain, followed by a period of work with continuing symptoms indicating that the original condition persists, and culminating in a second period of disability precipitated by some lift or exertion.

' 'On the other hand, if the second incident contributes independently to the injury, the second insurer is solely liable, even if the injury would have been much less severe in the absence of the prior condition, and even if the prior injury contributed the major part to the final condition. This is consistent with the general principle of the compensability of the aggravation of a preexisting condition.' 3 Larson, Workmen's Compensation Law, § 95.12, pp 508.130-508.133.' *Mullins v Dura Corp, supra*, 55-56. (Emphasis changed.)

See *Gilbert v Reynolds Metals Co*, 59 Mich App 62, 65; 228 NW2d 542 (1975)."

In the case of *Kostamo, supra*, 125, the Court recognized and again reiterated this rule of *any aggravation* by stating that,

"[i]n *Zaremba v Chrysler Corp*, 377 Mich 226, 231; 139 NW2d 745 (1966), the Court declared that compensation was payable for work-related heart damage without regard to whether there was unusual exertion before the attack:

' 'Notwithstanding anything we may have said in prior cases, we hold that an accidental injury arises out of the employment when the required exertion producing the injury is too great for the person undertaking the work, *whatever the degree of exertion or the condition of his health*, provided the exertion is either the sole or a contributing cause of the injury. In short, that an injury is accidental when either the cause or result is unexpected or accidental, *although the work being done is usual or ordinary*.' ' (Emphasis added by that Court.)"

These decisions emphasize that the rule of *any aggravation, contribution, or acceleration* concerns the occasion of the *personal injury* under the terms of the

post-modifier *arising out of and in the course of employment*. *Kostamo, supra*, 126. *Miklik, supra*, 370. The Court held in *Kostamo, supra*, 126, that,

> "[w]e do not add to or disturb those precepts, but, rather, address matters of proof.
>
> In a workers' compensation case, '[t]he claimant must show a reasonable relation of cause and effect between work and injury. Other possible or probable causes of injury do not have to be excluded beyond doubt'. *Kepsel v McCready & Sons*, 345 Mich 335, 343-344; 76 NW2d 30 (1956). The employment need not be the sole cause; it is enough if it contributes to the injury. See *Swanson v Oliver Iron Mining Co*, 266 Mich 121, 122; 253 NW 239 (1934)."

In *Miklik, supra*, 370, the Court held that,

> "[t]here must be a relationship proved between the damage and *specific* incidents or events at work. General conclusions of stress, anxiety, and exertion over a period of time do not satisfy this second requirement. There must be enough detail about that which precipitated the heart damage to enable the factfinder to establish the legal connection by a preponderance of the evidence.
>
> The link between he work and the heart damage need only be one of reasonable relationship of cause and effect. Other possible or probable causes need not be excluded beyond doubt. Further, the work need not be the *sole* cause of the damage; it is sufficient if the employment is a cause." (emphasis by the Court)

These decisions rightly maintain the distinction between *personal injury* that requires *damage to the body of the employee* and *arising out of and in the course of employment* that requires an employee demonstrate a connection to employment as directed by the architecture of the subordinate clause.

The WDCA describes a rule of *contributed to or aggravated or accelerated by the employment in a significant manner* for two kinds of conditions. MCL 418.301(2); MSA 17.237(301)(2). Section 301(2), first sentence, states that, *mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner.*

Section 301(2), first sentence, did not change the requirement of a *personal injury* by the terms of the pre-modifier in the statute. The change and, indeed, the only change was the text of a contribution *in a **significant** manner* which concerned the terms of the post-modifier in the statute as interpreted by *Deziel, supra,* and *Kostamo, supra. Hurd v Ford Motor Co,* 423 Mich 531; 377 NW2d 300 (1985). *Farrington, supra.* In the case of *Hurd, supra,* 534, the Court recognized that section 301(2), second sentence, rescinded *Deziel, supra,* by stating that, "[t]his Court holds that [section 301(2)] was enacted to invalidate . . . *Deziel* [citation omitted] and thus effecting a substantive change in the law and that the provisions . . . have prospective application."

In the case of *Farrington, supra,* 216-217, the Court explicitly acknowledged that the requirement of the pre-modifier of the statute of *personal injury* as *medically identifiable damage to the body of the employee which is distinct of any existing condition* and not symptoms was continued by section 301(2), first sentence; the change was to the post-modifier of the statute *arising out of and in the course of employment.* In particular, the Court held in *Farrington, supra,* 216-217, that,

> ". . . the legislative policy evidenced for heart disease after the 1982 amendments would restrict benefits to claimants under the second prong of *Kostamo,* as in the instant case, who could establish that their heart disease and injury were significantly caused or aggravated by employment. Included in this standard is the requirement that claimants also prove that the alleged cardiac injury resulting from work activities went *beyond the manifestation of symptoms of the underlying disease.* The heart injury must be significantly caused or aggravated by employment considering the totality of all the occupational factors and the claimant's health circumstances and nonoccupational factors."

D. THE STATUTES IN THE WDCA WHICH DESCRIBE DIFFERENT KINDS OF DISABILITY DO NOT APPLY TO DESCRIBE *PERSONAL INJURY.*

Currently, there are five different kinds of *disability* which are described by six separate statutes in the WDCA. Section 301(4); MCL 418.401(1); MSA 17.237(401)(1). MCL 418.361(2)(a) - (l); MSA 17.237(361)(2)(a) - (l).

MCL 418.361(3)(a) - (g); MSA 17.237(361)(3)(a) - (g). MCL 418.373(1); MSA 17.237(373)(1). Section 901(a). For example, section 301(4), first sentence, and section 401(1), first sentence, describe one kind of *disability* by stating that *as used in this chapter, 'disability' means a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease.* See *Sington v Chrysler Corp*, 467 Mich 144; 648 NW2d 624 (2002). Section 373(1) describes an entirely different kind of *disability* by stating that,

> "[a]n employee who terminates active employment and is receiving nondisability pension or retirement benefits under either a private or governmental pension or retirement program, including old-age benefits under the social security act, 42 U.S.C. 301 to 1397f, that was paid by or on behalf of an employer from whom weekly benefits under this act are sought shall be presumed not to have a loss of earnings or earning capacity as the result of a *compensable injury or disease under either this chapter or chapter 4*. This presumption may be rebutted only by a preponderance of the evidence that the employee is unable, because of a work related disability, to perform work suitable to the employee's qualifications, including training or experience. This standard of disability supersedes other applicable standards used to determine disability under either this chapter or chapter 4." (emphasis supplied)

See *White v General Motors Corp*, 431 Mich 387; 429 NW2d 576 (1988). Section 901(a) describes yet another kind of *disability*.

While *symptoms* of an existing condition may produce an impediment which may be thought of as a disability in a colloquial way, it is impossible for symptoms of an existing condition to be said to be a *disability* in the peculiar way that the term is defined by the WDCA if only because there are so very different definitions of *disability* by the WDCA.

All the definitions of *disability* by the WDCA which allow weekly workers' disability compensation benefits, section 301(4), section 401(1), section 361(2), section 361(3), and section 373(1), apply *after* an employee has a *personal injury*. Again, section 301(4), first sentence, states that, *as used in this chapter, 'disability' means a*

limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a ***personal injury or work related disease.***

The Court has always recognized the distinction between *personal injury* and *disability*. *Leskinen v Employment Security Comm*, 398 Mich 501; 247 NW2d 808 (1976). The Court held in the case of *Leskinen, supra*, 508-509, that,

> "*[e]ligibility* for benefits under the act is established when an employee proves that he has suffered a personal injury which arose 'out of and in the course of his employment'. MCLA 418.301(1); MSA 17.237(301)(1). *Van Atta v Henry*, 286 Mich 379; 282 NW 185 (1938). It is only after this threshold determination that the *amount* of benefits is then computed. The statutes and the prior decisions of this Court make apparent the fact that 'earning capacity' is a factor in calculating the *amount of benefits*, not whether a claimant has suffered a work-related *personal injury*." (emphasis by the Court)

See also: *Pike v City of Wyoming*, 431 Mich 589, 599; 433 NW2d 768 (1988).

While symptoms of an existing condition might produce one kind of *disability* or the other, that disability would not and could not constitute *personal injury* without conflating the text and the purpose of the statute.

E. THE DIFFERENCE BETWEEN THE WDCA AND OTHER LAWS IS MAINTAINED BY DESCRIBING *PERSONAL INJURY* AS *MEDICALLY IDENTIFIABLE DAMAGE TO THE BODY OF THE EMPLOYEE WHICH IS DISTINCT FROM ANY EXISTING CONDITION.*

The pre-modifier *personal* in the subordinate clause of the statute maintains the relationship of the WDCA with other laws. It is the pre-modifier *injury* which distinguishes damage to *property* of an employee and allows the operation of the common law of premises liability. Ruined clothes, damaged jewelry such as a bracelet or watch, a broken hearing aid or glasses, or a crumpled fender of an automobile are certainly an *injury* or damage that an employee could experience at work. Such an *injury* is not within the ambit of the WDCA because it is not a ***personal*** *injury*. Such an *injury* or damage is instead ***property*** *damage* and redressed through the common law of premises liability as the

employee is an invitee and the employer is a premises owner. See *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591; 614 NW2d 88 (2000).

This is why the Court of Appeals was correct in deciding that damage to some clothing worn by an employee was not a *personal injury*. *Romano v South Range Construction Co*, 8 Mich App 533; 154 NW2d 560 (1967).

It is the pre-modifier *personal* which distinguishes damage to *intangible rights* of an employee and allows the operation of those laws that recognize such whether contract law or common law or civil rights legislation. The loss of an abridgement of a right or an interest which was established with an employer by contract or by law may be an *injury* because of a very damage to that intangible right whether the denial of a promotion, deprivation of liberty by false arrest, humiliation or discrimination but none of these are a ***personal*** *injury* because none of these are *medically identifiable damage to the body of the employee*. *Moore v Federal Department Stores, Inc*, 33 Mich App 556; 190 NW2d 262 (1971). *Milton v Oakland Co*, 50 Mich App 279; 213 NW2d 250 (1973). *Slayton v Michigan Host, Inc*, 122 Mich App 411; 332 NW2d 498 (1983). The Court of Appeals accurately held in *Slayton, supra*, 416-417, that an employer could not invoke the immunity from civil suit established by the WDCA, MCL 418.131(1); MSA 17.237(131)(1), because humiliation, embarrassment, damage to a career and professional esteem were from a *discrimination* injury which is intangible and not a *personal* injury which is tangible,

> " . . . a victim of discrimination may bring a civil suit to recover for damages for any humiliation, embarrassment, outrage, disappointment, and other forms of mental anguish which flow from the *discrimination* injury. Such claims are not barred by the exclusive-remedy clause of the Workers' Disability Compensation Act because they are independent of any disability which might be compensable under the act. These types of injuries are the kind that the Elliott-Larsen Civil Rights Act was designed to protect against and the hold otherwise would undercut the legislative scheme to remedy discriminatory wrongs. [citations omitted]" (emphasis supplied)

Similarly, in *Moore, supra,* 559, the Court of Appeals held that an employer could not invoke the immunity from civil suit because section 131 did not apply when there was a loss or infringement of a recognized liberty interest,

> "[i]t is plaintiff's claim that her humiliation, embarrassment, and depravation of personal liberty are not the type of 'personal injury' contemplated in the above-quoted section. We agree.
>
> The Act has been interpreted to encompass physical and mental injuries which arise out of and in the course of one's employment. However, the gist of an action for false imprisonment is unlawful detention irrespective of any physical or mental harm. See *Carr v National Discount Corporation* (CA 6, 1949), 172 F2d 899; *cert den* 338 US 817 (70 S Ct 59, 94 L Ed 495). We do not feel, therefore, that the plaintiff has suffered the type of personal injury covered under the [WDCA]."

Likewise, the loss of employment by wrongful discharge or other breach of employment is an *injury* but it is an injury to the intangible right under a contract which the law recognizes and is not an injury to the *person* of the employee and so, not a *personal* injury within the ambit of the WDCA. *Milton, supra. Robinson v Chrysler Corp,* 139 Mich App 449; 363 NW2d 4 (1984).

In the case of *Milton, supra,* 284, the Court of Appeals allowed a civil action by an employee for breach of an employment contract because of the difference between injury to an intangible right or interest recognized by law and the injury to the person or body of the employee, "[the employee] has a right to judicial review of [the] claims for additional [wages], improper discharge, and violation of the merit-system rules. The distinction between compensation for industrial injuries and damages arising from the employment relationship which are contractual in nature is undeniable."

In *Robinson, supra,* the Court of Appeals said that the response to unemployment was not a personal injury. Cf. *Calovecchi v Michigan,* 461 Mich 616; 611 NW2d 300 (2000).

Plainly, *personal injury* means *damage to the person or body of the employee* which is tangible when identified by qualified physicians and is not damage to the intangible rights or privileges recognized by law whether a contract or a civil right. This means a *symptom* of an existing condition is not a *personal injury* because there is no tangible damage. Also, it means that a *symptom* is not a basis for a civil action because an ache, a cough, an itch, vertigo, nausea and the like are not intangible rights which are recognized by law as are a contract right or a civil right.

F. *CARTER v GENERAL MOTORS CORP*, 361 MICH 557; 106 NW2d 105 (1960) AND ITS PROGENY ARE WRONG AND MUST BE REVERSED.

While the decisions of the Court are entirely consistent in describing the term *personal injury* and there is a very large body of case law from the Court of Appeals recognizing and applying this, there are divergent decisions from the Court of Appeals. *Fox v Detroit Plastic Molding and Corporate Service*, 106 Mich App 749; 308 NW2d 633 (1981), rev'd 417 Mich 901; 330 NW2d 690 (1983). *Thomas v Chrysler Corp*, 164 Mich App 549, 555; 418 NW2d 96 (1987), lv den 429 Mich 881 (1987). *McDonald v Meijer, Inc*, 188 Mich App 210, 215; 469 NW2d 27 (1991), lv den 439 Mich 902; 478 NW2d 623 (1991). *Anderson v Chrysler Corp*, 189 Mich App 325, 329; 471 NW2d 623 (1991), lv den 440 Mich 909; 489 NW2d 86 (1992). *Siders v Gilco, Inc*, 189 Mich App 670, 673; 473 NW2d 802 (1991), lv den 439 Mich 982; 483 NW2d 865 (1992). *Laury v General Motors Corp (On Rem) (On Reh)*, 207 Mich App 249; 523 NW2d 633 (1994), en banc hearing den, 207 Mich App 801; 524 NW2d 270 (1994), lv den 453 Mich 873; 554 NW2d 3 (1996). *Mattison v Pontiac Osteopathic Hospital*, 242 Mich App 664; 620 NW2d 313 (2000). For example, the Court of Appeals said in *Fox, supra*, 760-761,

> "[t]he idea that the injury must be the result of a traumatic event is contrary to the state of the law as it now exists. In *Carter v General Motors Corp*, 361 Mich 577; 106 NW2d 105 (1960), the Supreme Court held that a psychosis resulting from the emotional pressures experienced by plaintiff daily on his job was a compensable personal injury within the meaning of the

> precursor to MCL 418.301(1); MSA 17.237(301)(1). In *Carter*, the claimant was disabled by 'paranoid schizophrenia' not manifesting itself in a physical injury. Here, plaintiff actually was physically disabled, and the WCAB found that this disability was caused in part by the emotional pressures plaintiff was subjected to on the job. In both *Carter* and the instant case, the plaintiffs suffered from preexisting infirmities-Carter from 'pre-existing latent mental disturbances' and plaintiff Fox from preexisting arteriosclerosis. We see no grounds in the Worker's Disability Compensation Act allowing us to distinguish emotional pressures resulting in disabling mental illness and emotional pressures resulting in a disabling atherosclerotic heart condition."

Most recently, the Court of Appeals said in the case of *Mattison, supra*, 671, that, "[i]t is the settled law of this state that [compensation] may be awarded when . . . work only aggravates or exacerbates the symptoms of an underlying condition, even if the underlying condition itself was not caused, aggravated, or accelerated by the work."

The case law from the Court upon which these decisions were grounded was *Carter, supra*. See *Fox, supra*, 760. *Carter, supra*, is not authority for the idea that only symptoms of an existing injury or illness or the progressive effects of an existing injury or illness constitutes a *personal injury*. First, in the case of *Carter, supra*, the Court said that there actually was medically identifiable damage separate from an existing injury or illness of that employee. Specifically, the Court observed that employee had "a mental injury caused by . . . employment." *Carter, supra*, 586. The compensation was ended when there was no evidence of a disability from this injury. *Carter, supra*, 594.

Second, *Carter, supra*, was the progenitor of *Deziel, supra*. The Court said that the standard of law announced in *Deziel, supra*, was necessarily implicit in *Carter, supra*. In particular, the Court said in *Deziel, supra*, 31, 32,

> "[o]ur reading of stare decisis in Michigan impliedly requires the use of a subjective standard in compensation cases involving psychoneuroses and psychoses. *Carter v General Motors Corp, supra*, has long been recognized not only as the leading Michigan case, but probably as the landmark case in the nation in this area of workers' compensation law. See Malone, Plant & Little, Cases and Materials on the Employment Relation pp 276-290.

> In *Carter*, the Court did not address the precise problem of what causal nexus is sufficient to find compensation in cases where the claimant is disabled as a result of a personal injury and honestly, though perhaps mistakenly, perceives his disability as work-related.
>
> However, a careful reading of *Carter* leads to the inescapable conclusion that the Court employed the subjective standard in determining whether plaintiff's claimed disability and injury involving psychosis was compensable.
>
> * * *
>
> The Court, in quoting the proffered psychiatric testimony, clearly employed a strictly subjective causal nexus. The Court and the psychiatrist were concerned with how the 'patient saw himself,'how 'he really felt himself,' etc.
>
> The court, without precisely stating so, analyzed how this particular injured and disabled claimant perceived reality, even though it is very probable that, due to latent psychoses, he misperceived his employment situation."

This standard which was expressed in *Deziel, supra*, and implicit in *Carter, supra*, was repudiated by section 301(2). *Hurd, supra*. *Robertson, supra*. Whatever *Carter, supra*, may have meant ended on January 1, 1982, when the statute was re-enacted with the amendment of section 301(2).

Third, the first case which was decided by the Court of Appeals which cited *Carter, supra*, for the notion that the symptoms of an existing injury or illness were alone enough to constitute a *personal injury* was *Fox, supra*, which was promptly reversed by the Court. In the case of *Fox, supra*, 760-761, the Court of Appeals said that,

> "[t]he idea that the injury must be the result of a traumatic event is contrary to the state of the law as it now exists. In *Carter v General Motors Corp*, 361 Mich 577; 106 NW2d 105 (1960), the Supreme Court held that a psychosis resulting from the emotional pressures experienced by plaintiff daily on his job was a compensable personal injury within the meaning of the precursor to MCL 418.301(1); MSA 17.237(301)(1). In *Carter*, the claimant was disabled by 'paranoid schizophrenia' not manifesting itself in a physical injury. Here, plaintiff actually was physically disabled, and the WCAB found that this disability was caused in part by the emotional pressures plaintiff was subjected to on the job. In both *Carter* and the instant case, the plaintiffs suffered from preexisting infirmities-Carter

> from 'pre-existing latent mental disturbances' and plaintiff Fox from preexisting arteriosclerosis. We see no grounds in the Worker's Disability Compensation Act allowing us to distinguish emotional pressures resulting in disabling mental illness and emotional pressures resulting in a disabling atherosclerotic heart condition.
>
> The Supreme Court has recently considered again the status of mental conditions resulting in disabilities for purposes of the Worker's Disability Compensation Act in *Deziel v Difco Laboratories, Inc (After Remand)*, 403 Mich 1; 268 NW2d 1 (1978). The majority opinion specifically recognized as a compensable Chapter 3 disability a physical injury resulting from 'a mental stimulus'. *Id.*, 22. This is basically the situation we are presented with. Plaintiff Fox's work-related pressures constituted the 'mental stimulus' which aggravated a preexisting coronary condition resulting in a physical injury. It does not matter that the mental stimulus, itself, was insufficient to render plaintiff disabled. Its interaction with the underlying physical condition was found by the WCAB to have resulted in a Chapter 3 personal injury. Defendant makes much of the fact that any injury suffered by plaintiff was ultimately the result of heart disease aggravated by employment factors. However, this is no different from Carter's injury which was ultimately the result of mental disease aggravated by employment factors."

The Court reversed this decision and remanded the case for an explicit determination of whether there actually was medically identifiable damage to that employee separate from any existing injury or illness to constitute an injury as described in *Miklik, supra*. The Court said in *Fox, supra*, 901, "the judgment of the court of Appeals is reversed and the case is remanded to the Workers' Compensation Appeal Board for further proceedings consistent with [*Miklik, supra*]."

Most of the declarations of the Court of Appeals that symptoms of an existing injury or illness of an employee alone may constitute a *personal injury* on the authority of *Carter, supra*, are as obiter dicta because those cases actually involved situations of the medically identifiable damage to the person separate from an existing injury or illness or the progressive effects of those as required by *Miklik, supra*. The first case decided by the Court of Appeals that led to this was *Johnson v DePress Co*, 134 Mich App 709; 352 NW2d 303

(1984), lv den 422 Mich 882; 367 NW2d 68 (1985). See *McDonald, supra*, 215. The Court of Appeals cited *Johnson, supra*, in *McDonald, supra*, 215, stating,

> "[i]n *Carter v General Motors Corp*, 361 Mich 577; 106 NW2d 105 (1960), the Supreme Court found that the plaintiff suffered a compensable injury where his work aggravated the symptoms of his preexisting schizophrenic condition to the point where the plaintiff was unable to continue his employment. The plaintiff's underlying psychological condition was not found to have changed as a result of his employment, but the symptoms of the illness worsened to the point where the plaintiff was unable to continue that employment. See also *Johnson v DePree Co*, 134 Mich App 709, 718-819; 352 NW2d 303 (1984). We therefore hold that a disability based only on increased symptoms is a compensable injury within the meaning of the act. Furthermore, we note that a closed award of benefits is proper only when the plaintiff's symptoms, and not the underlying condition, have been aggravated by the claimant's employment."

Actually, the case of *Johnson, supra*, involved medically identifiable damage to the employee separate from any existing injury or illness or the progressive effects of an existing injury or illness constituting a *personal injury* by the terms of *Miklik, supra*. There, the Court of Appeals recounted the fact that the employee had been severely burned when a tanker truck exploded. All the symptoms were from that injury and not some earlier existing injury or illness. *Johnson, supra*, 711-712,

> "[o]n March 10, 1966, plaintiff was severely burned in an explosion involving a tank truck while he was employed by DePree Company. As a result of this incident, plaintiff spent four months in the Burn Unit at University Hospital in Ann Arbor. Treatment for the burns resulted in his deafness.
>
> In May, 1967, plaintiff returned to work. He had difficulties with pain, headaches, ringing in his ears, and communicating with people. The communication problem caused him to become 'frustrated and depressed.' Sometime in 1972, plaintiff was transferred from assistant lab director to lab technician. In March, 1972, plaintiff was discharged; at this time he was not feeling well. Soon thereafter, he was reinstated, but was told that he could not 'be sick anymore.' In April, 1972, plaintiff was admitted to a hospital and a psychiatric evaluation was conducted. Plaintiff stated that difficulties with communicating made his job very hard, and that he was continually confused, frustrated, and depressed. On May 24, 1976, plaintiff quit his job. Plaintiff attributed his decision to leave DePree to

> increasingly severe communication problems, constant roaring sounds in his head, headaches, and nervousness aggravated by contact with people."

Thomas, supra, is perhaps the most cited case for the idea that symptoms of an existing injury or illness of an employee are alone enough to constitute a *personal injury*. As *Johnson, supra,* the case of *Thomas, supra,* actually involved an employee with medically identifiable damage separate from an existing injury or illness. There, the employee had a severe rash and the eruptions that a dermatologist diagnosed as a contact dermatitis. The dermatologist explained that this injury or illness of dermatitis had itself been worsened because of the exposure to oils and grease at work. *Thomas, supra,* 553. Indeed, the condition was *not* an existing injury or illness when the employee started work. The concurrence in *Thomas, supra,* said that the only evidence was that the condition afflicting the employee was started because of work,

> "[t]he only evidence in the record relating to this question indicates that the disease is acquired and not inherited. There is also no evidence that the disease was acquired anywhere other than the place of employment. In any event, if the plaintiff had an underlying condition, it was clearly aggravated by the work place." *Thomas, supra,* 558 (SHEPHERD, J., concurring)

Anderson, supra, is almost identical to *Thomas, supra,* and only perpetuates the dicta.

McDonald, supra, involved a medically identifiable condition separate and distinct from an existing injury or illness of the employee as required by *Miklik, supra,* and not just symptoms as purported. The Court of Appeals recognized that the employee twisted a knee in a fall at work, "[o]n March 21, 1983, [the employee] slipped on an icy step as he alighted from his tractor. As a result, he twisted [the] left knee." *McDonald, supra,* 211-212. There were other existing conditions in the knees, notably degenerative arthritis from hemophilia, *McDonald, supra,* 212-213, which were unaffected. *McDonald, supra,* 212-218. As made clear in *Miklik, supra,* medically recognized damage, such as the twisted knee, is not made non-compensable because of other conditions.

The statement by the Court of Appeals in the case of *Cox v Schreiber Corp*, 188 Mich App 252; 469 NW2d 30 (1991), lv den 439 Mich 1020; 485 NW2d 565 (1992), that the symptoms of an existing injury or illness alone can constitute a *personal injury* was entirely gratuitous and dicta. There, the Court of Appeals recognized that the existing condition of aseptic necrosis was itself further worsened because of work and not merely a symptom. *Cox, supra*, 259,

> "[here the] situation can be distinguished from the 'exacerbation of symptoms' cases. Unlike the cases where the worker recovers from a bout of dermatitis or the pain of thoracic outlet syndrome and then returns to the same condition as before the trauma, in this case, plaintiff's hips were not in the same condition as they were before January 7, 1981. While plaintiff probably would have become disabled at some time because of the aseptic necrosis, the WCAB found that the events of January 7, 1981, aggravated the underlying condition and 'accelerated the inevitable.' For the WCAB to then state that this was just an exacerbation of symptomatology was incorrect.
>
> This was not, as in *Castillo, Durham*, and *Thomas*, just a matter of particular work conditions not being suitable for a worker with a preexisting condition, but leaving the worker no worse off once the work-caused symptoms subsided. Here, plaintiff's work conditions accelerated or aggravated his preexisting condition to the point of disability and left him worse off. . . ."

There are a few cases in which compensation was allowed when an employee with an existing injury or illness experienced only symptoms because of work. *Siders, supra. Laury, supra.* These decisions represent poignant examples of the error that occurs when statements made by a court when deciding cases are considered in isolation and without thoughtful attention to the decisions of the Court. In *Siders, supra*, the employee experienced pain in the back at work because a condition which had existed at birth and that had progressed with age, scoliosis, and eventually a rod was surgically inserted to reverse the change. The Court of Appeals observed that there was no medically identifiable damage that was separate from this existing scoliosis and its progressive effects. *Siders, supra*, 671-672. In particular, the Court of Appeals recognized that the employee suffered from severe, congenital scoliosis and in late 1979 the treating orthopedic surgeon inserted a

seventeen-inch rod to straighten the spine, and placed the employee in a back cast which was worn for a year. Before the surgery, the employee experienced significant pain which was attributed to employment. This was deemed to constitute a *personal injury* only on the authority of *Thomas, supra,* and *Carter, supra,*

> "[a] closed benefit award is not only permitted, but is the only type available where an employee's symptoms, rather than the underlying condition, are aggravated by his employment. *Thomas v Chrysler Corp,* 164 Mich App 549; 418 NW2d 96 (1987); *Carter v General Motors Corp,* 361 Mich 577; 106 NW2d 105 (1960)."

As discussed, *Thomas, supra,* and *Carter, supra,* actually involved no such situation in which the employee had experienced only the symptoms of an existing injury or illness. Rather, both of the cases involved medically identified conditions that were separate and distinct from an existing injury or illness. Also, *Carter, supra,* was suspect authority after the repudiation of its progeny, *Deziel, supra,* by section 301(2). *Hurd, supra. Peters v Michigan Bell Tel Co,* 423 Mich 594; 377 NW2d 774 (1985).

Certainly, the rote invocation of the statements in *Thomas, supra,* and *Carter, supra,* in *Siders, supra,* was not proper. The language of a court in any case cited as authority is not to be taken in the abstract. Instead, any pronouncement by a court is inexorably connected to the specific issue and the particular facts in the case. *Holcomb v Bonnell,* 32 Mich 6 (1875). In the case of *Holcomb, supra,* 8, the Court said that,

> "[i]t is hardly necessary to observe that the language used in deciding cases can rarely be separated from the specific matters contemplated by the court, without leading to results completely at variance with the principle with which the expressions were meant to harmonize. In laying down propositions which appear correct in view of the actual case as shaped by the record, it is not generally considered needful to write down in guarded terms the particular limitations of the propositions, or the conditions which would not be suited to them. It is supposed they will be read not as abstractions, but as propositions inseparably bound up with the particular issue and matters the court is then dealing with, and it is in this way that the observations in the case mentioned must be considered, and without yielding to them any further than the needs of that case required."

In *Laury, supra*, the Court of Appeals recognized the criticism of *Siders, supra*, and the idea that the symptoms of an existing injury or illness were not alone enough to constitute a *personal injury* but felt constrained by an administrative rule of the Court to obey the case law of *McDonald, supra*, and *Siders, supra*. *Laury, supra*, 251,

> "[t]he sole issue before us is whether plaintiff is entitled to worker's compensation benefits when plaintiff's disability is a result of symptoms that occur at work but the underlying pathological condition relating to the symptoms is due solely to a nonwork-related automobile accident.
>
> This Court has held that a disability based only upon increased symptoms, not an aggravation of the underlying condition, is compensable under the act. *McDonald v Meijer, Inc*, 188 Mich App 210; 469 NW2d 27 (1991), and *Siders v Gilco, Inc*, 189 Mich App 670; 473 NW2d 801 (1991). Under Administrative Order No. 1994-4 and Administrative Order 1992-8, we are constrained to follow this precedent and affirm the case before us.
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> If we were not so constrained, we would reverse on the ground that the worker's compensation law does not provide compensation where there is no aggravation of the underlying pathological condition. See *Castillo v General Motors Corp*, 105 Mich App 776; 307 NW2d 417 (1981), *Weinmann v General Motors Corp*, 152 Mich App 690; 394 NW2d 73 (1986), and *Kostamo v Marquette Iron Mining Co*, 405 Mich 105; 274 NW2d 411 (1979)."

This was remarkable by advancing the decisions of the Court of Appeals in *McDonald, supra*, and *Siders, supra*, as authority that superceded the case law from the Court including *Marman, supra, Kostamo, supra, Miklik, supra*, because of an administrative rule. This was unprecedented because the Court of Appeals cited no authority or example of another case decided by the Court of Appeals which had been applied as precedent over a decision of the Court on the basis of the court rule or, indeed, on any authority. This was rash because there was absolutely no explanation of precisely how the recent case law from the Court of Appeals such as *Siders, supra*, and *McDonald, supra*, which were recognized as suspect, could still control over the case law from the Court that was itself recognized in the decision, *Kostamo, supra*. At a minimum, the Court of Appeals in *Laury, supra*, ought

to have explained exactly how *Siders, supra*, and *McDonald, supra*, could supercede *Kostamo, supra*. And this was improper because before the administrative rule, a decision by the Court of Appeals was not a rule of law within the doctrine of stare decisis because other panels of the Court of Appeals and Court could not be bound by it. *In the Matter of Hague*, 412 Mich 532, 552; 315 NW2d 524 (1982). *Hackett v Ferndale City Clerk*, 1 Mich App 6, 11; 133 NW2d 221 (1965), *Tebo v Havlik*, 418 Mich 350, 379-380, n 17, 380, n 18; 343 NW2d 181 (1984) (LEVIN, J., dissenting), reh den 419 Mich 1201 (1984).

The administrative rules, Admin Order No. 1992-8 and Admin Order No. 1994-4, were a response to the question recognized in *Tebo, supra*, concerning whether the bench and bar may rely upon a decision of the Court of Appeals. Clearly, the court rule referenced by the Court of Appeals in *Laury, supra*, changed the law by making a published opinion of the Court of Appeals partly within the doctrine of stare decisis by requiring strict obedience by trial courts and other panels of the Court of Appeals. However, there is nothing in either the text of the administrative rules or the progenitor, *Tebo, supra*, which suggests that a published opinion of the Court of Appeals was entirely within the doctrine of stare decisis by requiring obedience in the face of an earlier opinion of the Court. It is not at all likely that the Court would abdicate the constitutional power to authoritatively interpret a statute by allowing the Court of Appeals to ignore established case law and fashion another rule which then must be followed by other panels and lower courts instead of the earlier, authoritative opinion. Ultimately, the Court of Appeals must obey the authoritative construction of the statute by the Court in *Marman, supra, Kostamo, supra, Miklik, supra*, and *McKissack, supra*, and not some isolated statements by the Court of Appeals in *McDonald, supra*, and *Siders, supra*.

Mattison, supra, perpetuates the mistake. First, the discussion about the availability of workers' disability compensation when an employee experienced the symptoms of an existing condition was superfluous because the fact was that the employee

had experienced a ganglion cyst which was medically identifiable damage that was separate from an existing illness or condition. *Mattison, supra*, 667.

Second, the Court of Appeals chose the statements from the Court of Appeals in *Laury, supra*, and denounced the ruling by the Court in *Farrington, supra*. *Mattison, supra*, 671, 672-673. There, the Court of Appeals bluntly announced that,

> "[i]n *Laury v General Motors Co (On Remand, On Rehearing)*, 207 Mich App 249; 523 NW2d 633 (1994), two members of the panel affirmed an award of benefits that was based on aggravation of symptoms alone, but stated their belief that benefits should not be awarded unless the underlying condition itself was caused or aggravated by work. Because controlling authority held otherwise, they reluctantly affirmed. One member of the panel concurred, expressing the belief that symptomatic aggravation is a proper basis for awarding benefits. The judges of this Court declined to convene a special panel to resolve the implicit conflict. 207 Mich App 801 (1994).
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> * * *
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> . . . the question whether aggravation of symptoms to the point of disability was sufficient to qualify a claimant for compensation was not before the *Farrington* Court. Rather, with regard to subsection 301(2), the *Farrington* Court addressed the question whether the 'significant manner' amendment of both subsections 401(2)(b), MCL 418.401(2)(b); MSA 17.237(401)(2)(b), and 301(2) of the WDCA applied only to occupational diseases under chapter 4 of the WDCA, or also applied to specific injuries under chapter 3. Because the Court's statement with regard to the manifestation of symptoms was dictum and specifically referred to cardiac cases, *Farrington, supra* at 216, we do not find *Farrington* to be controlling precedent."

As even a cursory reading of *Laury, supra*, and *Brewer, supra*, makes clear, it is emphatically **not** *settled law* that workers' disability compensation is available for an employee with only symptoms of an existing injury or illness. The Court of Appeals said in *Laury, supra*, that this principle was actually wrong and was followed only by compulsion of a court rule requiring obedience to a published opinion of the Court of Appeals. *Brewer, supra*, expressly recognized that the principle was indeed *divergent*.

More remarkable was the denouncement of a decision by the Court as dicta and wrong without a full analysis. In *Farrington, supra,* 216, the Court held that a claimant had to always establish "injury resulting from work activities went beyond the manifestation of symptoms of the underlying disease" whether the claim was characterized as a personal injury under section 301(1), first sentence, or as a disease under section 401(2)(b), second sentence.

This statement by the Court in *Farrington, supra,* 216, was *unanimous.* Justice Riley with Justices Brickley and Griffin explicitly agreed with this statement in *Farrington, supra,* 216, with Part III Appropriate Legal Standard, *Farrington, supra,* 214-218.

It is more than incongruous that the Court of Appeals would identify and rely on its own opinion in *Laury, supra,* which was not even endorsed there and reject the unanimous decision by the Court in *Farrington, supra,* on the subject. The decision is a direct affront to the authority of the Court to consider and establish the meaning of a statute.

The solution is the reversal of *Carter, supra,* and all of its progeny expressing the idea that the symptoms of an existing condition can be a *personal injury* including *Thomas, supra; McDonald, supra; Anderson, supra; Siders, supra; Laury, supra;* and *Mattison, supra.*

G. THIS CASE.

The Commission established that the Employee did not experience any medically identifiable damage to the body which was distinct from an existing condition. The fact of the matter was that the Employee experienced only symptoms of pain and discomfort. The Commission said in *Rakestraw, supra,* slip op., 1, that, "[the Employee] had a pre-existing problematic cervical condition which was *not* pathologically altered by . . . employment activities with [the Employer]." Those activities did give rise to ongoing disabling symptoms, however." (25a)

These facts are conclusive. MCL 418.861a(14); MSA 17.237(861a)(14), first sentence.

These facts mean that the Employee did not experience a *personal injury*.

RELIEF

Wherefore, defendant-appellant General Dynamics Land Systems, Incorporated prays that the Supreme Court reverse the order that was entered by the Court of Appeals, reverse the order that was entered by the Workers' Compensation Appellate Commission and remand the case to the Workers' Compensation Appellate Commission with the instruction to reverse the order that was entered by the Board of Magistrates and deny workers' disability compensation claimed by plaintiff-appellee E.W. Rakestraw.

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